

MICHAEL D. MURPHY (SBN 224678)
mdmurphy@foxrothschild.com
MATTHEW FOLLETT (SBN 325481)
mfollett@foxrothschild.com
JESSICA NWASIKE (SBN 343087)
jnwasike@foxrothschild.com
FOX ROTHSCHILD LLP
Constellation Place
10250 Constellation Boulevard, Suite 900
Los Angeles, California 90067
Telephone: 310.598.4150
Facsimile: 310.556.9828

Attorneys for Plaintiff and Counterclaim
Defendant SHAKEY'S PIZZA ASIA
VENTURES, INC. and Third Party Defendants
CINCO CORPORATION, PC
INTERNATIONAL PTE LTD., and SPAVI
INTERNATIONAL USA, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SHAKEY'S PIZZA ASIA VENTURES,
INC, a Philippines corporation,

Plaintiff,

v.

PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING,
LLC, a Delaware limited liability
company; GUY KOREN, an individual;
POTATO CORNER LA GROUP, LLC,
a California limited liability company;
NKM CAPITAL GROUP, LLC, a
California limited liability company;
J & K AMERICANA, LLC, a California
limited liability company; J&K
LAKEWOOD, LLC, a California
limited liability company; J&K
VALLEY FAIR, LLC, a California
limited liability company; J & K
ONTARIO, LLC, a California limited
liability company; HLK MILPITAS,
LLC, a California, limited liability
company; GK CERRITOS, LLC, a
California, limited liability company;
J&K PC TRUCKS, LLC, a California

Case No. 2:24-CV-04546-SB(AGRx)

The Hon. Stanley Blumenfeld, Jr.

**TRIAL BRIEF OF PLAINTIFF
AND COUNTERCLAIM
DEFENDANT AND ALL THREE
THIRD-PARTY DEFENDANTS.**

Complaint Filed: May 31, 2024

Trial Date: August 18, 2025

limited liability company; and, GK CAPITAL GROUP, LLC, a California limited liability company and DOES 1 through 100, inclusive,

Defendants.

PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a Delaware limited liability company; POTATO CORNER LA GROUP LLC, a California limited liability company; GK CAPITAL GROUP, LLC, a California limited liability company; NKM CAPITAL GROUP LLC, a California limited liability company; and GUY KOREN, an individual,

Counter-Claimants,

v.

SHAKEY'S PIZZA ASIA VENTURES, INC, a Philippines corporation,

Counter Defendant.

PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a Delaware limited liability company; POTATO CORNER LA GROUP LLC, a California limited liability company; GK CAPITAL GROUP, LLC, a California limited liability company; NKM CAPITAL GROUP LLC, a California limited liability company; and GUY KOREN, an individual,

Third Party Plaintiffs,

v.

PC INTERNATIONAL PTE LTD., a Singapore business entity; SPAVI INTERNATIONAL USA, INC., a California corporation; CINCO CORPORATION, a Philippines corporation; and DOES 1 through 10, inclusive,

Third Party Defendants.

TABLE OF CONTENTS

I.	SHORT SUMMARY OF FACTS	5
II.	ONE RECENT case implicating issues for trial	6
III.	<i>YUGA</i> FURTHER UNDERMINES DEFENDANTS’ ABSURD ATTEMPTS TO CHALLENGE SPAVI’S ACQWUISITION	9
IV.	REPLY To DEFENDANTS’ MEMORANDUM Of Contentons Of Fact And Law	11

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Arizona v. California</i> , 460 U.S. 605 (1983)	8
<i>B. F. Goodrich Co. v. A. T. I. Caribe, Inc.</i> , 366 F. Supp. 464,467 (D. Del. 1973)	10
<i>Imperial Residential Design, Inc. v. Palms Dev. Grp., Inc.</i> , 70 F.3d 96 (11th Cir. 1995)	11
<i>Palos Verdes Corp. v. Hous. Auth. of Los Angeles Cnty.</i> , 202 Cal. App. 2d 827 (1962)	10
<i>Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agr.</i> , 499 F.3d 1108 (9th Cir. 2007)	8
<i>Shakeys Pizza Asia Ventures, Inc. v. PCJV USA, LLC</i> , No. 24-7084, 2025 WL 1431270 (9th Cir. May 19, 2025)	8, 11
<i>Yuga Labs, Inc. v. Ripps</i> , No. 24-879, 2025 WL 2056060 (9th Cir. July 23, 2025)	6, 7, 8, 9

Statutes

15 U.S.C. § 1055	8
10 USC § 1055 –	7
evidence. L	6
Lanham Act	8

Other Authorities

Local Rule 16-10	5
Rule 11	12
Rule 37	12

Pursuant to Local Rule 16-10, Plaintiff Shakey's Pizza Asia Ventures Inc. ("Plaintiff" or "SPAVI") and Third Party Defendants Cinco Corporation, SPAVI International USA, Inc., and PC International PTE Ltd ("Plaintiff and Third-Party Defendants") offer the following Trial Brief.

I. SHORT SUMMARY OF FACTS

Although this Court likely has enough exposure to this case (in his nightmares, quite possibly), that it need not be reminded, the executive summary of the facts arise from SPAVI's acquisition of the global brand Potato Corner brand from Cinco effective March 2022, which include the distinctive dancing Potato ("Spudster") in the middle of a banner with yellows and greens, that also says "Potato Corner." That "Logo Mark" is now incontestable as per the USPTO, and serves as, effectively the "House Mark," or "Flagship Mark," as it incorporates the also registered characters mark – "Potato Corner." The third Mark is the tag line: "World's Best Flavored French Fries."

In March of 2022, SPAVI took over the in-progress negotiations with the troubled US Potato Corner network, the growth of which it concluded had lagged -- achieving less than 40 stores nationwide over a ten year period. The subject of the negotiations with PCJV USA, LLC ("PCJV") – owned and controlled by Defendant Guy Koren ("Koren") – was the documentation of the terms of PCJV's license in a written agreement. SPAVI was aware of the fact that no written agreement had been in place since the inception of PCJV, and wished to remedy that to create stability, and a predictable revenue stream for this public company.

After two years of slow responses and unreasonable demands (Koren insisting he would never pay a royalty of more than 0.7%, whereas PCJV third-party franchisees were paying 6%, and 10-years earlier he was willing to pay 5%) and after having vanished for months without responding to the polite emails of SPAVI executives, SPAVI concluded the negotiations were dead, and, on May 31, 2024, SPAVI terminated the license. Given that there was no written license in place,

1 SPAVI concluded that the license was terminable at will, and did just that.

2 Koren and PCJV did not respond to the termination, nor did they take any
3 action to cease use of the Marks now that the licenses to use them had been pulled.
4 They did not even acknowledge the termination had occurred, say, with an email
5 asking for time to comply and negotiate. They simply went on business as usual.
6 SPAVI was then forced to file an injunction against PCJV, Koren's Potato Corner
7 stores (most of the remaining affiliates), and separately set out to notify the
8 franchisees of PCJV that an injunction motion was looming and to reach out if they
9 wanted protection from closure pursuant to a Court order.

10 One contempt order later (and, sadly,, another one about to be filed), the parties
11 are now about to try what should be a simple damages case for a willful holdover
12 licensee. Instead, Defendants have manufactured and invested what can only be
13 called a lawless strategy resting on a house of cards that contradict statutory and
14 decisional law. They hope to invalidate the Potato Corner Marks and then take control
15 over them; however, this can only happen if the Court and jury took lawless action
16 and the Ninth Circuit affirmed.

17 This strategy however, as explained in Section III herein, requires vigilance by
18 SPAVI, and its counsel, to protect their record, and marks, by ensuring that the
19 evidence and law presented to the jury, particularly through witnesses and counsel
20 argument, adhere to what is permitted under the governing authorities and rules.

21 **II. ONE RECENT CASE IMPLICATING ISSUES FOR TRIAL**

22 There is one case decided by the Ninth Circuit in the last few weeks that is are
23 of note, and useful for the parties to consider when completing jury instructions and
24 claims analysis and marshalling of the evidence. L.R. 16-10(a).

25 In the case of Yuga Labs, Inc. v. Ripps, No. 24-879, 2025 WL 2056060, at *26
26 (9th Cir. July 23, 2025), the Ninth Circuit addressed from soup to nuts a dispute not
27 unlike this one, wherein a trademark infringement and unfair competition complaint
28 was alleged, the Defendant attempted every means possible (although in that case,

1 not contrary to statutory and decisional law), to invalidate the marks, and lost. As
2 such, the methodology and ordering of these issues is a reminder as to what takes
3 priority over which issue. As relevant to this case, *Yuga* Court also held as follows:

4 First, the Court confirms the factual uphill battle that Defendants face in this
5 case in their attempts to challenge SPAVI's ownership of the Potato Corner brand.
6 The penultimate fact that proves ownership is "priority" – i.e. the first to use the
7 Marks. *Yuga Labs, Inc. v. Ripps*, No. 24-879, 2025 WL 2056060, at *10 (9th Cir.
8 July 23, 2025). In our case, there is no dispute that a licensee of Cinco was the first
9 to use the Mark, and, thus, Cinco had priority. This is an undisputed fact – that a
10 licensee of Cinco was the first to use the Marks at issue – that should, quite frankly,
11 go into the Parties' Stipulated Facts, however, although proposed, it was rejected by
12 Defendants.

13 Defendants are seeking to invalidate this first use by Cinco (as reported in the
14 judicially noticeable registration with the USPTO), by two means, one is lawless and
15 the other takes a logical U-turn back to lawlessness.

16 Specifically, Defendants seek to argue that the first use should be credited to
17 the licensee: PCJV. This Court, and the Ninth Circuit have both rejected this
18 argument as a matter of law – as contradicting, for example 10 USC § 1055 – and
19 yet, they continue to rely on this argument that they, somehow, are the true owners
20 since they were the first to plant the flag of Potato Corner in the US. Specifically, the
21 Ninth Circuit ruled as follows:

22 PCJV argues that it has a superior claim to ownership of the marks as
23 the first and exclusive domestic user of the marks. But in the licensor-
24 licensee context, a licensee's use of a trademark inures to the benefit
25 of the licensor-registrant. *See* 15 U.S.C. § 1055..

26 *Shakeys Pizza Asia Ventures, Inc. v. PCJV USA, LLC*, No. 24-7084, 2025 WL
27 1431270, at *1 (9th Cir. May 19, 2025)

28 This affirmation – a holding on a legal issue – must constitute law of the case

1 (indeed, the law), and Defendants should not be allowed to traffic in this twice
2 rejected theory. It is not controversial to point out that rulings by this Court and the
3 Ninth Circuit “on pure issues of law, however, are binding.” *Ranchers Cattlemen*
4 *Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agr.*, 499 F.3d 1108,
5 1114 (9th Cir. 2007); *see, e.g. Arizona v. California*, 460 U.S. 605, 618 (1983) (citing
6 the rule as being “when a court decides upon a rule of law, that decision should
7 continue to govern the same issues in subsequent stages in the same case”).

8 The disregard for the actual text of the Lanham Act is almost as stunning as
9 the parade of truly likely horrible, should they be able to rewrite the Lanham Act with
10 defiant lawless jury instructions. If a licensee could, effectively, adversely possess the
11 brands they are promoting, this would immediately disrupt the entire intellectual
12 property regime, as now licensors would be adverse to the licensees around the world,
13 wary that if the licensees do too good a job, they lose their rights.

14 Plaintiff suspects that the Defendants will latch onto language in *Yuga* Court
15 explaining that the first use must have been “lawful.” Defendants have hinted at a
16 violation of the franchise law with the first use, but the evidence of this is quite flimsy,
17 and is not likely to satisfy the stringent requirement of the Ninth Circuit that the
18 violation has to be intertwined with, and not collateral to, the use of the Marks sought
19 to be invalidated. *Id.* Moreover, what Defendants of course do not explain is what the
20 *next* use was: a subsequent use by a licensee of Cinco, PCJV. Again, they run into 15
21 USC § 1055. Defendants cannot, and should stop trying, to get around the fact that
22 Cinco was the valid priority owner of the Marks.

23 The rest of *Yuga*, does not offer much guidance on the disputed facts,
24 particularly given that in this case, unlike *Yuga*, the infringer was once a licensee,
25 and the willful and petulant refusal to stop using the Marks has – as Plaintiff will argue
26 – crossed over into pure counterfeiting. Indeed, Plaintiff will, within the next forty-
27 eight hours be filing an Ex Part Application to shorten time for hearing on a second
28 contempt motion involving violations of the Injunction that truly shock the conscience

1 of any person claiming to respect the institution of this Court.

2 **III. YUGA FURTHER UNDERMINES DEFENDANTS’ ABSURD**
3 **ATTEMPTS TO CHALLENGE SPAVI’S ACQUISITION**

4 That said, *Yuga* does offer one additional nugget for Defendants to consider as
5 they present their alternative attack against SPAVI’s ownership – challenge the
6 sufficiency of the (conclusive) proof that SPAVI purchased the entirety of the brand,
7 including all rights affecting the US and all goodwill. Specifically, as Defendants seek
8 to ask this Court to allow them to (strangers to the transaction) invite the jury to
9 disregard a deed signed by the seller (Cinco) and the buyer (SPAVI) notarized by
10 both, attesting to the complete sale of all intellectual property and goodwill, the Ninth
11 Circuit reminds us all of this: when interpreting deal documents signed between two
12 parties to an agreement, “our job . . . is to construe the words of the contract, not after-
13 the-fact statements about its contents. *See Miller v. Glenn Miller Prods., Inc.*, 454
14 F.3d 975, 989 (9th Cir. 2006) (per curiam) (“[T]he fundamental goal of contract
15 interpretation is to give effect to the mutual intent of the parties as it existed at the
16 time of contracting.” (alteration in original) (citation omitted)). *Yuga*, 2025 WL
17 2056060, at *12. T

18 As applied to this case, the contracting parties to the sale of Potato Corner were
19 Cinco and SPAVI. As such, the goal of this Court in interpreting the deal documents
20 is to give effect to the meaning of the mutual intent of Cino and SPAVI, not the
21 fantasies of a stranger to the deal: PCJV and Koren.

22 Defendants repeatedly complain that they were denied the transactional
23 documents – an assertion that disregards the simple fact that the deeds (Trial Exhibits
24 4 and 6) **are the transactional documents**. Most commonly analyzed in the real estate
25 context, courts described deeds as “an executed contract [that is] is subject to the rules
26 applicable to contracts.” *Est. of Stephens*, 28 Cal. 4th 665, 672, 49 P.3d 1093, 1096–
27 97 (2002). To be effective they go from one party to the next, and, in this context,
28 each notarized the document so as to make it effective. Accordingly, “if the language

1 of a deed is plain, certain, and unambiguous, neither parol evidence nor surrounding
2 facts and circumstances will be considered to add to, detract from, or vary its terms or
3 to determine the estate conveyed.” *Palos Verdes Corp. v. Hous. Auth. of Los Angeles*
4 *Cnty.*, 202 Cal. App. 2d 827, 836 (1962). As such, the deed is the final word of Cinco
5 and SPAVI, and no other document preceding it matters.

6 Defendants repeatedly scoff that deeds are for dirt, and not intellectual
7 property. This is incorrect, and the finality of deeds is in fact a concept that applies in
8 the intellectual property context as well. *B. F. Goodrich Co. v. A. T. I. Caribe, Inc.*,
9 366 F. Supp. 464,467 (D. Del. 1973) (applying this concept in the intellectual property
10 context). It is true there is less case law on this, but that is because deeds are less
11 common in the IP realm, as there is not a recordation requirement for protection of
12 rights.

13 Notwithstanding their failure to adduce any law whatsoever establishing that
14 the deeds memorizing the sale of the brand and its goodwill entirely (including the
15 US), are not to be believed, Defendants continue to claim they have the right to dig
16 into the parol evidence of their competitor. They are untethered by precedent, and
17 unhindered by the absence of any authorities supporting them, and as such they
18 demand that SPAVI and this Court waste resources letting them present a theory that
19 will eventually lose when those who care about precedent realize that the deeds are
20 conclusive evidence of ownership.

21 The entertainment of any actual effort by Defendants to change the terms of
22 the sale of Potato Corner between SPAVI and Cinco has always seemed curious. As
23 the Eleventh Circuit opined in a similar challenge by a third party to a sale of
24 copyrights: “where there is no dispute between the copyright owner and the transferee
25 about the status of the copyright, it would be unusual and unwarranted to permit a
26 third-party infringer to invoke [the requirement of a writing memorializing the status]
27 to avoid suit for copyright infringement.” *Imperial Residential Design, Inc. v. Palms*
28 *Dev. Grp., Inc.*, 70 F.3d 96, 99 (11th Cir. 1995).

At the end of the day, PCJV and Koren are just that: infringers seeking to invoke contract interpretation rules to challenge what the owner of the IP acquired. They cite no law allowing third parties to proffer parol evidence of someone else's deal. When viewed through this lens they are simply trying to find some excuse for their willful infringement.

IV. *REPLY TO DEFENDANTS' MEMORANDUM OF CONTENTIONS OF FACT AND LAW*

Section 1A – comprising the first eight pages of Defendants Memorandum of Contentions of Fact and Law is nothing short of astonishing. (Dkt. 197.) Not one of these arguments is supportable by law and fact. Indeed, this entire critique of SPAVI's claims repeats the very same arguments rejected by this Court and the Ninth Circuit. Out of the gate, Defendants again trot out the argument that the Amended Joint Venture Agreement *is* the license agreement with Cinco – a claim rejected by this Court and the Ninth Circuit. There the Court affirmed, holding that:

But the AJVA contained an agreement to enter a *future* Master License Agreement, not a “perpetual license” like PCJV claims. See [*First Nat'l Mortg. Co. v. Fed. Realty Inv. Tr.*, 631 F.3d 1058, 1065 \(9th Cir. 2011\)](#) (“[A]n ‘agreement to agree,’ without more, is not a binding contract.”).

2025 WL 1431270, at *one.

Whereas the separate analysis as to the fake unsigned illusory license agreement left room open for further evidence, the ruling on the AJVA was as a matter of law, and must, again, hold as the law of the case.

Plaintiff has made its belief as to the failure of Defendants' pleadings to satisfy Rule 11 known to this Court. That violation is now about to have severe consequences on due process, which is why Plaintiff views Defendants' brief as a warning that unless ordered otherwise, Defendants will continue to cite bad law, and will do everything they can to push bad law and unsupportable facts on a jury –

1 leading to wasted time, resources, and potentially errors so bad by Defendants that a
2 mistrial is requested.

3 As such, Plaintiff respectfully requests that this Court rule, finally, on those
4 aspects raised by Defendants in their putative theory of the case have been
5 adjudicated against them as a matter of law, and are law of the case. Once that issue,
6 and the issue of Cinco's priority, the validity of the sale of Potato Corner, the absence
7 of rights by PCJV to own the brand, etc., the more streamlined this trial, and focused
8 on the real facts in dispute.

9 There are two other ways in which Defendants' penchant for incorrect
10 assertions to this Court are also revealed in that Section 1(A).

11 First, in an attempt to produce this Court against Plaintiff, they make the wildly
12 outrageous accusation of "suppression of evidence." They claim Plaintiff was
13 ordered to produce documents and failed, and then purports to decisive that order in
14 its footnote one. Plaintiff respectfully requests that this Court focus instead on the
15 source document Defendants purport to summarize – which can be found in Dkt. 128,
16 in which the Magistrate reported on an agreement made informally, and entered into
17 as an order, that only ordered a subset of the purchase and sale agreement (that do
18 not exist) to be produced. Moreover, at the hearing on Defendants' late Rule 37
19 Motion, the Magistrate went through her March 12 order and concluded that the only
20 unsatisfied portion was that which ordered the gathering of documents – a gathering
21 that was so large it was impossible to accomplish. Moreover, and finally, of course,
22 the purchase and sale agreements are irrelevant, as again, the sole sale document that
23 matters are the deeds.

24 PCJV is a competitor. It developed its competing brand while infringing on
25 SPAVI's. It should not be given the keys to the financial innards of SPAVI's
26 acquisition of their competitor unless it is necessary. They failed to prove that.
27 Indeed, they never even made a motion to compel.

28 And yet, they accuse Plaintiffs' of "suppression."

1 Each authority cited, each fact asserted, each document described by
2 Defendants must be taken with a grain of salt, and the source document reviewed.
3 Otherwise, Plaintiff will be prejudiced irreparably.

4 The remainder of Defendants brief will be addressed in other documents.

5
6 Dated: August 11, 2025

/s/ Michael D. Murphy
Michael D. Murphy
Matthew Follett
Jessica Nwasike
Fox Rothschild LLP
*Attorneys for Plaintiff and
Counterclaim Defendant, and Third
Party Defendants*

CERTIFICATE OF SERVICE

The undersigned certifies that, on August 11, 2025, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court's ECF filing system. I further certify that all counsel for all parties to this action are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: August 11, 2025

FOX ROTHSCHILD LLP

/s/ Michael D. Murphy

Michael D. Murphy
Attorneys for Plaintiff and Counterclaim
Defendant SHAKEY'S PIZZA ASIA
VENTURES, INC. and Third Party
Defendants CINCO CORPORATION,
PC INTERNATIONAL PTE LTD., and
SPAVI INTERNATIONAL USA, INC.